IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.22 OF 1994.

Balu Bhimrao Bisale
Res. of Veet,
Tal : Karmala,
Dist : Solapur. .. Appellant
(Orig.accused no.1.)

vs.

The State of Maharashtra .. Respondents.
(Orig. Complainant)

Shri T.E.Mane, Advocate for the Appellant.

Mrs.Bhosale, P.P. for the Respondent.

CORAM : S.S.PARKAR
& S.R.SATHE,JJ.

DATED : 14TH SEPTEMBER, 2004.

JUDGMENT :

1. Appellant, the original accused no.1 in Sessions Case No.129 of 1990 has preferred this appeal against the judgment and order passed by the court of 5th Additional Sessions Judge, Solapur, whereby the accused no.1 was convicted for the offences punishable under section 498A, 302 r/w. 201 of Indian Penal Code and sentenced to

suffer R.I. for one year for offence punishable under section 498A, life imprisonment for the offence punishable under section 302 I.P.C. and R.I. for one year for the offence punishable under section 201 of I.P.C.

2. Brief facts giving rise to this appeal are as under :

. The marriage of accused no.1 had taken place with deceased Nagin @ Vimal about eight years prior to the incident. According to prosecution version at the time of marriage of the younger sister of deceased which had taken place few months prior to the incident, the father of the deceased had offered some gifts to the deceased, probably he being eldest son in law. However, deceased was not satisfied with it and since then he was demanding cot, bed and wrist watch from father of the deceased and on that ground the accused used to harras the deceased.

. On 1.10.1989 the father of the deceased received message from accused no.1 that deceased

was missing from their house. Naturally, Bhanudas the father of deceased immediately rushed to the house of the accused. However, he found that no one was present in the house. He therefore searched for the deceased and finally on 2.10.1989 filed missing complaint with Karmala Police Station. The said complaint was handed over by the PSI to Police Head Constable Gaikwad for further inquiry into the matter. On 3.10.1989 Dhansingh Nimbalkar gave A.D.Report exhibit 31 in respect of Nagin @ Vimal. Infact, dead body of the deceased was found floating in the well on 3.10.1989. As a result of the same Dhansingh Nimbalkar gave information and it was registered as A.D. PSI Madhukar Kulkarni thereafter went to the place where the dead body was found and did inquest panchanama. Thereafter the dead body was sent for post mortem. The P.I. recorded statements of the father of the deceased and complaint exhibit 26 was registered on 4.10.1989, in which the father alleged that the accused was not treating the deceased well and he was insisting for cot, bed and wrist watch. He, therefore showed suspicion about the death of his

daughter Nagin. On receipt of the post mortem notes it was disclosed that the death of deceased was caused due to injury caused to head and it was not a case of drowning. The police therefore registered the offence punishable under section 302 of I.P.C. as well as for the offence punishable under section 201 of I.P.C. After completion of the investigation police submitted chargesheet against the accused in the Court of J.M.F.C. Karmala as in the complaint suspicion was shown about the death of the deceased and during investigation it transpired that the death was not suicidal or accidental. As there was some material to show that the accused nos.2 to 4 were also involved in the alleged offence, the police submitted chargesheet against the accused no.1, i.e. husband of deceased, accused no.2-brother of accused no.1 and accused nos.3 and 4 the parents of accused no.1. Finding that the accused are chargesheeted for the offence punishable under section 302 of I.P.c. which is exclusively triable by the Court of Sessions, the learned J.M.F.C. committed the case to the Sessions Court, Solapur.

3. The 5th Additional Sessions Judge, Solapur framed charge exhibit 3 against the accused nos.1 to 4. In order to bring home the guilt of the accused prosecution examined as many as 7 witnesses consisting of two panch witnesses namely Maruti Gade and Raghunath Jadhav, Complainant Ajinath Bhanudas Shelke exh.26, Bhanudas Shelke, father of the deceased exhibit 27, Sister in law of deceased, Sushila Bisale i.e. wife of accused no.2.exhibit 32 P.W.5 and PSI Madhukar Kulkarni P.W.6 and Dr. Saroj Khot P.W.7 who did the post mortem. From the suggestions put to the prosecution witnesses and from the statement of the accused recorded under section 313 of Cr.P.C. as well as the written statement submitted by the accused, it appears that the defence of the accused was of total denial. The accused contended that on the day prior to the day when deceased was found missing, the deceased had been to their field and after supplying meals, returned home. On that day at night deceased was in the house alongwith her two minor children. On the next day morning they were waiting for their meals

but she did not come. They, therefore sent one boy to make inquiry and it was found that the deceased was not in the house. They, therefore, started searching the deceased.

4. After considering the evidence adduced by the prosecution the learned Sessions Judge came to the conclusion that there was evidence to show that deceased was subjected to cruelty and the accused was demanding wrist watch, cot and bed as alleged by the father of the deceased. He also held that the death of Nagin was not suicidal or accidental, but it was homicidal. According to him there was sufficient circumstantial evidence to connect the accused no.1 with the alleged crime. He, howeverfound that there was no evidence against the accused nos.2 to 4 and such accquitted the accused nos.2 to 4 and convicted only accused no.1 as mentioned above.

5. The accused no.1 has therefore challenged the said order of conviction and sentence in this appeal. In this appeal before us Shri Mane, learned Advocate for the accused has urged only

three points. Firstly, he submitted that the learned Sessions Judge has not properly appreciated the evidence on record and has wrongly held that the accused no.1 was demanding cot, wrist watch and bed from the father of the deceased and that on that ground she was subjected to harassment. Secondly, he canvassed before us that admittedly there was no direct evidence to prove the guilt of the accused. According to him the circumstantial evidence produced on record was grossly inadequate to come to the conclusion that the accused committed the offence in question. He, therefore, submitted that the appeal be allowed and the order of conviction and sentence be set aside.

6. In order to prove that the death of Nagin was homicidal, the prosecution has examined Dr. Khot at exhibit 37. She has stated that on 4.10.1989 when she did the post mortem, she noticed that left 8th, 9th, 10th & 11th rib had fracture on lateral side of sternum. Left lower portion of lung was torn, left lung collapsed and blood in the left thorax. According to her death

was caused due to shock and the haemorrhage due to rupture of vital organ i.e. left lung. The death, was not because of drowning. She has also stated that the injuries were anti mortem. Thus from the evidence of Dr. Khot it appears that the death of Nagin was homicidal. It must also be noted here that if we peruse the cross examination of the doctor as well as the questions put to other witnesses it does appear that it is not even the contention of the defence that the death was accidental or suicidal.

7. The main and material question is whether the death was caused at the hands of accused no.1 At the outset it must be mentioned that there is absolutely no direct evidence against the accused. Though the prosecution has alleged that there was demand by the accused for wrist watch, cot and bed, we find that besides the bare interested words of father of deceased no one else has stated that there was such demand. We can not ignore the fact that admittedly the marriage had taken place about 8 years back. There is nothing on record to suggest that during the period of first seven

years at any point of time there was any demand of articles from the father of accused or by the accused. Though the father of deceased has stated that on account of demand of the above mentioned articles there was harassment to the deceased, it must be noted that there is absolutely no evidence worth the name to show that she was subjected to cruelty. It is needless to say that whenever such allegation regarding harassment on account of demand of money or particular articles is made, the prosecution has to adduce cogent and consistent evidence in that behalf. On the contrary, we find that in the instant case evidence with regard to said demand and harassment is very scanty and as such we have absolutely no hesitation to hold that prosecution has miserably failed to prove that the father or the accused was demanding those articles and on that count she was subjected to harassment. So the finding in that behalf recorded by the learned trial judge is not legal and correct.

8. Shri Mane, learned Advocate for the accused argued before us that the finding recorded

by the learned trial judge in respect of the offence punishable under section 302 as well as 201 of I.P.C. is also not legal and correct and the same is not at all in consonance with the evidence on record. From the perusal of the judgment of the trial court it appears that the learned trial judge has rightly held that there is no direct evidence against accused in the instant case. However, he has further observed that there is sufficient circumstantial evidence on the record to connect the accused with the alleged crime. The law regarding circumstantial evidence is well settled. When the case rests upon the circumstantial evidence, such evidence must satisfy three points. Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Secondly, those circumstances should be of a definite tendency unerringly pointing towards guilt of accused and lastly, the circumstance taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. So, bearing in mind this position of law, let us find out what is the circumstantial evidence on record in the instant case against the accused.

9. The learned trial judge has observed that the first circumstance which is against the prove in each and every case that there was a motive.However, at the same time it is well settled that in the case of circumstantial evidence it is always necessary to find out as to whether there was any motive for the alleged crime. According to the trial judge there was illegal demand made by the accused to the father of the deceased with regard to wrist watch, bed, cot, chain and gold ring and as the said demand of the accused was not fulfilled the accused had animus against the deceased and as such there was motive. However, we have already mentioned above that there is absolutely no legal evidence against the accused to show that he had made any such

illegal demand and on that ground there was any animus against the deceased. On the contrary, we find that even the father of the deceased has clearly admitted in his cross examination that about one month prior to the incident deceased had been to him and at that time she had not stated anything to him against the accused. Not only that he has also stated that deceased and accused were residing happily . So, we have no hesitation to hold that the prosecution has totally failed to prove any motive.

10. While considering the question as to whether there is any circumstantial evidence against the accused we must scrutiny the evidence of all the prosecution witnesses. If we examine the deposition of the said witness accordingly we find that none of the prosecution witness had infact brought on record any such circumstance against the accused which would indicate that the accused has committed the offence in question. So far as P.W.1 is concerned, he is the panch witness in respect of panchanama of the house of the accused. It is very clear from the evidence of

said witness as well as the panchanama exhibit 20 that no incriminating material was found in the house of the accused. So the evidence of this witness does not help the prosecution in any way. The same is the case in respect of P.W.2 Raghunath Jadhav exhibit 21. He is the panch for inquest panchanama. From the inquest panchanama one can only see that when the dead body was taken out of the well it was in a decomposed state and there were some such circumstances and signs which indicated that the death must not have been caused due to drowning. But that does not mean that the said evidence was of such nature which would lead any conclusion against the accused. The third witness is Adinath Shelke exhibit 24. Though he is the brother of deceased, he has turned hostile and as such his evidence is also of no use. The father of the deceased Bhanudas, exhibit 27, has also not stated anything except the fact that there was demand made by the accused at the time of the marriage of his younger daughter. That aspect has already been dealt with by us and it is very clear that his evidence is also of no use to prosecution. Then Dr. Khot has stated about the

post mortem carried out by her. She has stated that the case was not of drowning, but that by itself can not be said to be the circumstance which unerringly point out the guilt of the accused. Not only that, but even the Investigating Officer has also not stated anything which can be recorded as circumstantial evidence against the present accused.

11. From the perusal of the judgment of the trial court it appears that the learned trial court has proceeded under the assumption that the alleged incident has taken place in the house of the accused. Infact, in his judgment he has observed " offence has taken place within four walls of the house". It must be noted that there was not even a single witness who has said that the alleged offence has taken place in the house. Nobody has even said that at the relevant time the accused was even seen near the house. Infact, there is no sufficient evidence to show as to when exact the alleged offence occurred. We have already mentioned above that no incriminating material was found at the house of the accused.

The prosecution has examined one witness by name Sushila Bhisale, wife of accused no.2. to prove that the alleged offence has taken place in the house of the accused, but unfortunately she has turned hostile and as such there is no legal evidence on record to show that the offence has taken place at the house of the accused. So the observation of the learned trial judge to that effect is not at all based on any legal evidence and as such it can not be accepted.

12. The learned trial judge has observed : "Thus, on the fateful night deceased was in the custody of accused no.1 is established beyond reasonable doubt". We fail to understand on what basis he has arrived at this conclusion. It is true that deceased was married with accused no.1 and they were residing together. However, it does not mean that when the alleged incident took place the deceased was in actual custody of the accused. It is pertinent to note that in the instant case there is nothing on record to show that the incident has occurred at the matrimonial home. While considering this aspect it would be

worthwhile to see the two rulings relied upon by the learned trial judge. The first one is Mulukraj Vs. Satish Kumar and others AIR 1992 SC 1175. It is true that in that case there was no direct evidence and the husband was convicted for having committed murder of his wife on the basis of circumstantial evidence. However, the fact of the said case and fact of the case in hand are quite different. In that case, admittedly the alleged incident had taken place in the bed room of the accused, while in the instant case there is nothing on record to show that the alleged incident had taken place even in the house of the accused. Besides this, there was also evidence with regard to motive. While in the instant case admittedly there is absolutely no evidence with regard to motive. So the ratio of the above cited case is not at all applicable to the facts and circumstances of the present case. Same is the position in respect of the other ruling on which reliance has been placed by the prosecution. It is Sarojini Vs. State of M.P. 1993 Cri.L.J.1648. In that case also the alleged incident had taken place in the house of the accused and there was

motive. There were letters on record showing that there was demand of certain articles or money by the accused. In the instant case there is no evidence with regard to motive so the ratio of the said ruling is also not at all applicable to the facts of the present case. The conduct of the accused was also taken into consideration and it was noticed that it was most unnatural. In the above mentioned two cases the accused had given wrong information i.e. about the manner in which the death occurred. However, in the instant case we find that the accused has not given any such specific information giving cause of death. Moreover, in those cases after the incident the accused was not traced. However, in the case at hand there is absolutely no evidence on this issue. None of the prosecution witness has stated that after the incident the accused was missing or absconding. It is not even shown that though the death of his wife had occurred his subsequent behaviour was totally indifferent towards the incident. On the contrary it appears that on 1.10.1989 when accused found that his wife is not at home he had infact gone to the house of the

father of the deceased and informed that deceased is missing. It is true that he has not lodged the missing complaint with the police immediately, but that by itself would not be sufficient to jump to the conclusion that the accused had committed the offence in question. We also cannot ignore the fact that on 1.10.1989 the accused went to the father of the accused and informed him about the missing of his daughter and thereafter the father had lodged missing complaint exhibit 28 on the next day i.e. on 2.10.1989. So, under such circumstances, non filing of missing complaint by the accused is not sufficient to hold him guilty of the charge levelled against him. It appears that the learned trial judge has given much importance to the fact that the accused had taken a false plea of alibi. Firstly, it must be noted that if we read the cross examination of the prosecution witnesses, we find that it is no where even suggested to any of these witnesses that at the relevant time the accused was at a particular place. In this case there is no evidence to show that alleged crime has taken place at particular time. All that was done by him was that he had

informed the father of the deceased that deceased was not seen after the night of the previous day. In the written statement under section 313 Cr.P.C. the accused had only sated that on that day at night they were in the field and on the subsequent day the deceased did not come to the field with their tiffin and as such they made querry. So, in strict sense this can not be said to be the defence of alibi. Assuming that there was the defence of alibi, still we can not ignore the fact that the burden of proving the case against accused is on the prosecution irrespective of whether or not the accused made out a plausible defence and discharged the onus of alibi if any. For this reliance can be placed on Gurucharan Singh Vs. State of Punjab AIR 1946 SC 460. Similarly in State of Haryana vs. Prabhu AIR 1979 Sc 1019 the Apex Court has held that the prosecution case can not be said to have been proved against the accused merely because he came out with the plea of alibi, but did not adduce any evidence in that behalf. So, merely because in the instant case accused have not adduced any specific evidence to show that on that day he was in field

we can not jump to the conclusion that prosecution case must be said to have been proved. At the cost of repetition it must be said that in this case there is infact no evidence adduced by the prosecution to show that on the fateful night the accused was infact in the house or he was even seen nearby the house. There is absolutely no evidence with regard to last seen together. Merely because the deceased was the wife of the accused we can’t jump to the conclusion that under the circumstance of the case the accused has committed the offence in question. Incidentally, it must also be noted that though the statements of neighbourers were recorded by the Investigating Officer, the prosecution has not examined any of them nor there is anything on record to show that there was any particular reason for the prosecution in not examining the witnesses.Though there was not even a slightest evidence to show that the accused had committed the murder or that he had carried the dead body to the well, the learned trial Judge has even held that the accused threw the dead body in the well. There was not even a single witness saying anything on this

point. Finding of the learned trial judge in that behalf was also erroneous.

13. As in the instant case death of Nagin had occurred in mysterious manner, and according to trial judge there was no other evidence to show that any other person had any reason to commit the murder of Nagin and the accused had not filed any complaint regarding missing of his wife, the learned trial judge has reached to the conclusion that there is circumstantial evidence against the accused. We have already pointed out that there is no such circumstantial evidence which would unerringly point out the guilt of the accused. The evidence on record creates suspicion or even grave suspicion about the accused, but it is well settled that suspicion however grave it may be can't take place of proof. So we have absolutely no hesitation to hold that in the instant case prosecution has failed to prove that the accused has committed the offences punishable under section 498A, 302 r/w.201 of I.P.C.

14. In this view of the matter the order of

conviction and sentence passed by the Court of 4th Additional Sessions Judge, Solapur in Sessions Case No.129 of 1990 is set aside and accused is acquitted of the offences punishable under section 498A, 302 and 201 of I.P.C.

. His bail bond stands cancelled.

(S.S.Parkar, J.)

(S.R.Sathe, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.22 OF 1994

Balu Bhimrao Bhisale .. Appellant
vs.
The State of Maharashtra .. Respondents.

Mr. T.N.Mane, Advocate for the Appellant.
Mr.V.B.Konde Deshmukh, Advocate for the Respondent.

CORAM : S.S.PARKAR
& S.R.SATHE, JJ.

DATED :14th September,2004

P.C.

. For the reasons recorded seperately in oral judgment, the Court passes the following order.

. The appeal is allowed. The order of conviction and sentence passed by the Court of 4th Additional Sessions Judge, Solapur in Sessions Case No.129/90 is set aside and the accused is acquitted of the offences punishable under section 498A, 302 and 201 IPC. His bail bond stands cancelled.

(S.S.PARKAR,J)

(S.R.SATHE,J)